Calendar No. 943

97TH CONGRESS, 2d Session | SENATE | REPORT No. 97-655

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE PEMBINA CHIPPEWA INDIANS IN DOCKETS NUMBERED 113, 191, 221, AND 246 OF THE COURT OF CLAIMS

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1735]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1735) to provide for the use and distribution of funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

The amendments are as follows:

1. On page 2, line 11, insert after the word "Tribe," the following phrase: "the Little Shell Tribe of Chippewa Indians of Montana,".
2. On page 2, line 15, strike out "or 6(a)" and insert in lieu thereof the following: "6(1) or 7(a)".
3. On page 2, line 23, strike out the word "plus".
4. On page 2, after line 23, insert new subsection (4) to read as follows: "(4) the number of members of the Little Shell Tribe of Chippewa Indians of Montana as described in section 6(1), plus".
5. On page 2, line 24, strike out "(4)" and insert in lieu thereof the following: "(5)".
6. On page 2, line 25, strike out "6(a)" and insert in lieu thereof the following: "7(a)".
7. On page 3, strike out lines 18 through the word "Indians." on line 22.
8. On page 4, strike out lines 20 through 25, and on page 5 strike out lines 1 through 8 through the word "Reservation.", and insert in lieu thereof the following:

(A) economic programs
(B) recreation or
(C) tribal administration.

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9. On page 6, insert after line 11, the following:

SEC. 6. The funds allocated by section 2 to the Little Shell Tribe of Chippewa Indians of Montana shall be used and distributed as follows:

(1) Eighty per centum of such funds shall be distributed in the form of per capita payments (in sums as equal as possible) to all enrolled members of the Little Shell Tribe of Chippewa Indians of Montana who are living on the date of enactment of this Act and who met the enrollment criteria under Sec. 7(a) of this Act.

(2) Twenty per centum of such funds shall be held in trust and invested by the Secretary for the benefit of the members of the Little Shell Tribe of Chippewa Indians of Montana. The governing body of such tribe is authorized to use the interest and investment income accrued on such 20 per centum portion, on an annual budgetary basis subject to the approval of the Secretary, for—

(A) the administration of such tribe, or

(B) social and economic programs;

Provided. That the Secretary shall act on the Tribe's petition for Federal recognition prior to September 30, 1985. In the event that recognition is not approved, the twenty per centum portion shall be distributed in the form of per capita payments (in sums as equal as possible) to those persons who qualify for per capita payments under sec. 6(1); *Provided further*, That if the Secretary fails to act on the recognition petition by September 30, 1985, the Secretary shall make a report to Congress on that date outlining the reasons for his failure to act and shall make no per capita payments under this subsection until action on the petition is final.

10. On page 6, line 12, strike out "SEC. 6." and insert in lieu thereof the following: "SEC. 7.".

11. On page 8, line 6, strike out "SEC. 7." and insert in lieu thereof the following: "SEC. 8.".

12. On page 8, line 17, insert after the word "protect" the words "and preserve".

13. On page 8, strike out lines 19 through 25 and insert in lieu thereof the following:

SEC. 9. "None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered income or resources when determining eligibility for, or the amount of, assistance under the Social Security or any Federal or federally-assisted program.

PURPOSE

The purpose of S. 1735 is to provide for the use and distribution of funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims on March 18, 1980. The United States set aside funds, over $47 million, on March 25, 1980, to satisfy this judgment.

The Secretary of the Interior did not submit a plan for the distribution of this judgment award within the time prescribed by the 1973 Indian Judgment Fund Act (87 Stat. 466, 25 U.S.C. 1401) nor did the Secretary propose legislation for the distribution of the monies.

S. 1735 will provide for the timely distribution of the monies awarded to the Pembina Chippewa Indians by the Court of Claims on March 18, 1980.

BACKGROUND AND NEED

The Court of Claims award addresses the 1905 taking of a large tract of aboriginal land, encompassing more than 8 million acres and extending from the present day north central part of North Dakota to the Canadian border.

The Pembina Chippewa Indians ceded to the United States lands in the Red River area by treaty in 1863. The claim for uncompensated taking under this treaty was settled by the Congress in 1971 (Act of July 29, 1971, 85 Stat. 158). The remaining lands in the area, which lay west of the Red River area, were later ceded by the Pembinas.

It was for the purpose of acquiring this remaining area that the Congress established the McCumber Commission, which, by 1892, reached an agreement with the Pembinas to acquire, for the United States, approximately 10 million acres of land at a purchase price of ten cents per acre. This agreement became known as the "Ten Cent Treaty," although formal treaty making with the Indians ended in 1871. Congress, on April 21, 1904, approved the "Ten Cent Treaty", with certain amendments, and the Pembina Chippewa approved this agreement on February 15, 1905. The 1905 date serves as the official taking date, and it is the 1905 value of the lands that is the basis for the 1980 Court of Claims award.

The Court of Claims awarded over $47 million, subject to the question of a $5 million offset claimed by the United States, to the Pembina Chippewa Indians on March 18, 1980.

S. 1735 provides for the use and distribution of the total award, to four organized groups of Pembina Chippewa Indians:

1. The entire tribal membership of the Turtle Mountain Band of Chippewa Indians of North Dakota;
2. a majority of the members of the Chippewa Cree Tribe of Rocky Boy's Reservation of Montana;
3. Pembina Chippewa affiliated with the White Earth Reservation of the Minnesota Chippewa Tribe, a small minority of such tribe; and
4. specifically defined Pembina Chippewa not enrolled as members of certain, specified tribes.

LEGISLATIVE HISTORY

S. 1735 was introduced by Senator Andrews, for himself and Senator Melcher, on October 14, 1981, and was referred to the Senate Select Committee on Indian Affairs. The Committee held a hearing on the bill on June 17, 1982. A markup of the bill was held at a Committee business meeting on September 29, 1982, at which time the bill was ordered reported favorably, with amendments.

An identical bill, H.R. 6416, was introduced in the House of Representatives on May 19, 1982, by Mr. Dorgan, for himself and Mr. Marlenee, Mr. Sabo and Mr. Williams, and was referred to the House Committee on Interior and Insular Affairs, which has scheduled hearings for September 30, 1982.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session, on September 29, 1982, by unanimous vote and with a quorum present, recommended that the Senate pass S. 1735, as amended.

SECTION-BY-SECTION ANALYSIS OF S. 1735, AS AMENDED

Section 1

Authorizes the distribution of awards in dockets numbered 113, 191, 221, and 246 of the United States Court of Claims.

Section 2

Provides for the Secretary to divide the funds among five groups: Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, the Little Shell Tribe of Montana, and the non-member Pembina descendants. Each group will receive a share in relationship to the number of individuals within the group who are eligible, as set out in sections 3 through 7.

Section 3

Provides that the award to the Turtle Mountain Band of Chippewa be distributed as follows:

(1) eighty percent per capita;

(2) twenty percent to the governing body of the Tribe, held in trust and invested by the Secretary, for the purpose of Tribal administration or for social and economic programs, subject to approval by the Secretary.

The Committee deleted a requirement that proposed expenditures by the Tribe of $5000 or more be subject to tribal referendum. After consultation with the Tribes and the BIA, it was felt such a requirement would be cumbersome and ineffective. Tribal constitutional procedures are sufficient to address membership concerns regarding tribal budget and expenditures.

Section 4

Provides that the award to the Chippewa Cree Tribe of Rocky Boy's Reservation be distributed as follows:

(1) eighty percent per capita to members who can establish Pembina Chippewa ancestry to the Secretary's satisfaction.

(2) twenty percent to the governing body of the Tribe, held in trust and invested by the Secretary, for the purpose of development of economic programs, recreation or tribal administration, subject to approval by the Secretary.

As introduced, S. 1735 contained eight very specific projects for use of the 20 percent set aside, but at the Committee's hearing in June the tribe requested a more general list of proposed uses and S. 1735 was amended in accordance with this request.

A provision for tribal referendum identical to that deleted in Sec. 3 was also deleted here for the same reasons.

Section 5

Provides that the award to the Minnesota Chippewa Tribe be distributed as follows:

(1) eighty percent per capita to members who are designated as Pembina Band Chippewas according to Secretarial approved Tribal procedures.

(2) twenty percent to the White Earth Reservation Business Committee, held in trust and invested by the Secretary, for the purpose of a joint investment and use program for the bands affiliated with the reservation or for social and economic programs for the reservation, subject to approval by the Secretary.

Section 6

Provides that the award to the Little Shell Tribe of Chippewa Indians of Montana be distributed as follows:

(1) eighty percent per capital to those enrolled members of the tribe who satisfy the enrollment criteria of Sec. 7(a).

(2) twenty percent to the Tribe for administration and social and economic programs, provided that the Secretary shall act on the tribe's petition for recognition by September 30, 1985. If disapproved, the 20 percent shall be distributed to those persons who were paid under Sec. 6(1).

Section 6 wes adopted by the Committee in response to the request of members of the Little Shell Tribe who are actively seeking to get Federal recognition and who have voted to reserve 20 percent of their judgment for tribal purposes.

Section 7

Provides that the award to non-member Pembina Chippewa descendants shall be distributed per capita, and that eligibility shall be established for those Pembina Chippewa descandants who are:

(1) at least ¼ Pembina Chippewa blood,

(2) U.S. Citizens,

(3) living on the date of this Act's enactment,

(4) not members of the Red Lake Band of Chippewa Indians, the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe, or the Minnesota Chippewa Tribe, and

(5) enrolled, or the descendant of a lineal ancestor enrolled, on Pembina Chippewa rolls specified in this Act or otherwise acceptable to the Secretary.

The section also directs the Secretary to promulgate regulations regarding non-member Pembina enrollment procedures.

Section 8

Directs that per capita shares shall be paid directly to living competent adults. Per capita shares to beneficiaries of deceased individuals, to legally incompetent individuals, and to minors under eighteen shall be paid in accordance with regulations and procedures to be established by the Secretary.

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Section 9

States that any of the funds distributed under this Act shall be neither subject to any income tax, nor considered as income in determining eligibility for financial assistance or benefits under the Social Security Act or other federal benefit programs.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1735, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1735, a bill to provide for the use and distribution of funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims, as ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1982.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. The bill would establish the division of approximately $52 million in judgment funds previously awarded to the specified tribes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 1735, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The legislative report on S. 1735 received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 16, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1735, a bill "To provide for the use and distribution of funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims."

We recommend the enactment of S. 1735, if amended as suggested herein.

S. 1735 would provide for the use and distribution of funds awarded to the Pembina Chippewa Indians in Docket Nos. 113, 191, 221 and 246 of the Court of Claims. The bill would require the funds to be divided among four beneficiary entities—the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe, the Minnesota Chippewa Tribe and the non-member Pembina descendants—on the basis of their respective number of members. In the disposition of the Turtle Mountain share, the Chippewa Cree share and the Minnesota Chippewa share, 80 percent of the respective share would be distributed per capita and 20 percent would be held in trust and invested by the Secretary of the Interior. The income from such investment would be utilized for social and economic programming. The share of the non-member Pembina descendants would be distributed per capita.

The U.S. Court of Claims on March 18, 1980, issued a "partial judgment" in the amount of $47,376,622.93 to plaintiffs in Dockets 113, 246, 191 and 221 originally filed with the Indian Claims Commission. Funds to satisfy the award were appropriated on March 25, 1980. An additional amount of $4,900,715.04, the result of the litigation of offsets claimed by the United States, was appropriated on December 24, 1981. S. 1735, in sections 1 and 2, would provide for the use and distribution of both appropriations in satisfaction of the award.

The award was made for the 1905 value of a large aboriginal tract, over eight million acres, in north-central North Dakota extending to the Canadian border. By an 1863 treaty, the Pembina Chippewa ceded the lands in the Red River area immediately to the east of the lands involved in the present claims award. Congress established the McCumber Commission to acquire the unceded Pembina lands west of the Red River area. After considerable confusion, an agreement between the Federal Government and the Turtle Mountain Pembine Chippewa was made on October 22, 1892, which became known as the "Ten Cent Treaty" because about ten cents an acre was paid for roughly ten million acres. Congress amended and approved the agreement on April 21, 1904, and the Pembinas approved it on February 15, 1905.

The sociopolitical history of the Pembina Band, particularly as it extends from the 1860's, is extremely complicated. After an exhaustive examination of the Pembina situation, the Bureau of Indian Affairs in its Results of Research Report dated August 19, 1980, recommended that four modern entities be considered representative of the historic Pembina Band and the proper beneficiaries of the award.

Consistent with these findings and recommendations, S. 1735 would vest the award funds in the Turtle Mountain Band of Chippewa Indians of North Dakota (in terms of the total tribal membership), the Chippewa Cree Tribe of Rocky Boy's Reservation of Montana (in terms of the number of members of Pembina ancestry, the overwhelming majority), the Minnesota Chippewa Tribe (in terms of the number of Pembinas affiliated with White Earth Reservation, a small minority) and the Pembina descendants of at least one-quarter Pembina blood who are not members of the three organized successor tribes. Most of the non-member Pembina descendants are residents of Montana and are not members of, or eligible for membership with, any recognized tribes.

There are factions of Pembina Chippewas who continue to assert that they are fully representative of the historic Pembina Band and should be the sole beneficiaries of the award funds. Usually referring

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to themselves as the Little Shell Band, they are principally located in North Dakota in the Turtle Mountain Reservation area. These factions are comprised of both members and nonmembers of the organized Turtle Mountain Band and are led by individuals who have formally withdrawn from membership with Turtle Mountain. The number of those who have withdrawn, but continue to reside on the reservation, does not exceed 35. One of the principal assertions made by these factions or their leaders is that many Turtle Mountain Band members are Canadians or members of Canadian Indian Bands and therefore illegally enrolled. We have found no basis for these assertions and regard all members of the Turtle Mountain Band to derive ultimately from the Pembina Band of Plains Ojibwa. We also point out that many of the unenrolled Montana descendants also refer to themselves as the Little Shell Band (more recently the "Little Shell Tribe of Chippewa Indians of Montana"). S. 1735 nowhere contains the identification "Little Shell Band" and this we find to be consistent with our recommendations. The appellation Little Shell is of no value in establishing Pembina ancestry. Section 6(a) of the bill would provide for derivation from any one of several rolls in identifying Pembina descendants. The use of all of these cited rolls has been recommended in the Results of Research Report. Section 6(a)(1) of the bill would require a minimum of one-quarter blood for Pembina descendant enrollment. This criterion maintains parity with the enrollment conditions of the three organized beneficiary tribes.

Section 3, 4 and 5 would provide for the Turtle Mountain share, the Chippewa Cree share and the Minnesota Chippewa share, respectively, to be distributed on an 80 percent per capita and a 20 percent programming basis. The Turtle Mountain Band, on September 11, 1980, passed Resolution No. 2534–09–80 in support of a proposal for an 80 percent per capita payment and 20 percent for tribal administration and social and economic programming. The Chippewa Cree Tribe's proposal accompanied Resolution No. 42–80 of November 26, 1980. The White Earth Reservation Business Committee, empowered by the Minnesota Chippewa Tribe, tendered a proposal for an 80 percent per capita payment and 20 percent for programming in the form of Resolution No. 85–81 which was passed in December 1980. All three tribal proposals are wholly acceptable to this Department and, except for the aspects discussed below, are incorporated in S. 1735.

Our only concern with S. 1735 is with section 3(2), pertaining to Turtle Mountain programming, and section 4(2), pertaining to Chippewa Cree programming, which contain identical language subjecting proposed tribal budgets utilizing $5,000 or more of interest or investment income in any fiscal year to a tribal referendum in accordance with the respective constitutions of the tribes.

The Turtle Mountain Band informed us on November 17, 1981, they are concerned about this language. The tribe is cognizant that all interest and investment income accured in a given year will be well in excess of $5,000. The tribe also desires to avoid the expense of conducting a referendum if neither the membership nor the governing body requests such referendum. Therefore, we recommend that the words $5,000 or more of" be deleted on page 3, line 18, and that the words "if called" be inserted after the word "referendum" on the same page, line 20.

On November 18, 1981, the Chippewa Cree tribal governing body, through the Agency Superintendent, requested a deletion of all reference to a tribal referendum. We, therefore, recomend that the following sentence on page 5, line 4 of section 4(2), be deleted:

"A proposed tribal budget utilizing $5,000 or more of such interest or investment income in any fiscal year shall be subject to a tribal referendum in accordance with the constitution of the Chippewa Cree Tribe of Rocky Boy's Reservation."

Unlike the handling of the earlier Pembina Chippewa award for the 1863 treaty taking of Red River lands, we do not expect a lengthy enrollment period. The roll provided for in the Act of July 29, 1971 (85 Stat. 158), for the 1863 Pembina award of $237,000 is only now nearing completion. The principal reason for the delay in completing this roll is that over 24,000 applications were received. Approximately 1,000 applications are still in need of review; however, this work is proceeding rapidly. This particular roll is cited in section 6(a) of S. 1735 as one of the sources which might be employed to identify non-member Pembina descendants. We believe that it will prove to be the principal source; therefore, its completion will accelerate the process of establishing the four shares of the beneficiary entities of the present award. The Turtle Mountain roll is maintained current and we do not anticipate difficulty in developing the Pembina portions of the Minnesota and Chippewa Cree tribal rolls. The Turtle Mountain enrollment exceeds 19,000; the Pembina portion of the Chippewa Cree roll is expected to exceed 2,000; and that of the White Earth Pembinas will probably be about 1,200. We estimate that the descendant roll will contain over 5,000 names when completed.

Section 7 of S. 1735 would provide for the protection of the per capita shares of deceased individual beneficiaries, legal incompetents and minors. These provisions are generally standard; however, we recommend that section 7(c), concerning the handling of the shares of minors and incompetents, be amended. Employing some of the wording in section 3(b)(3) of the Indian Judgment Funds Act of October 19, 1973 (87 Stat. 466), would render section 7(c) stronger in terms of protecting the interests of such beneficiaries. Accordingly, we recommend that the words "and preserve" be inserted after the term "protect" on page 8, line 17. This amendment would include the concept of continual investment of the share for the legally incompetent beneficiary or for the minor until such beneficiary reaches the age of eighteen.

Finally, with respect to section 8 and consistent with our recommendation on similar legislation in the past, we recommend that section 8 be revised to read as follows:

"None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered income or resources when determing eligibility for, or the amount of, assistance under the Social Security Act."

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration.

Sincerely,

KEN SMITH,
Assistant Secretary—Indian Affairs.

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